THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 27th day of October, 2006

W.P.No.13427 of 2003

Between:

Smt. Gaddam Narasamma … Petitioner

and

Gaddam Rathanaiah & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.13427 of 2003

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Orders dated 23-12-2002 made in C.A.No.32 of 2000 on the file of the learned Administrator General, High Court Buildings, Hyderabad – 3rd respondent - in granting Letters of Administration to respondents 1 and 2 in respect of petitioner's assets as arbitrary and illegal, or alternatively, direct the 3rd respondent to receive all and further documents, if any filed by the petitioner as well as respondents 1 and 2 and dispose of the said C.A. on merits afresh so as to do substantial justice.

It appears that one Gaddam Lingaiah had no issues. Therefore, he said to have adopted one Narasaiah, natural son of respondents 1 and 2. A Memorandum of Adoption also said to have been executed on 3-1-1981 between the parties; thus, he became the son of the petitioner as well her late husband Lingaiah. It is the case of the petitioner that they had performed the marriage of their adopted son during the intervening night of 2/3-12-1993 with one Nagalakshmi, the second daughter of Eramalla Chandraiah of Kattangur village and Mandal, Nalgonda district. It is unfortunate that the adopted son died on 30-11-1996. They belong to Barbar (Mangali) community. Both the husband of the petitioner as well as the adopted son were Barbers

by profession. While so, at Karodagiri Naka or Customs Naka Building Place in Nakrekal village, where petty traders have been conducting their business by obtaining leases from the Gram Panchayat, the husband of the petitioner obtained a small plot on lease from Gram Panchayat and erected a Bunk/Hut No.131 thereon at his own cost. Her husband had been paying annual rent regularly to the Gram Panchayat as per Section 104 of the Andhra Pradesh Gram Panchayat Act,1964. In this regard, she has filed notices dated 29-9-1984 and 25-7-1985 received from the Gram Panchayat and the rental receipts issued by the Panchayat in respect of Bunk/Hut No.131. Subsequently, her husband also died on 31-10-1989 intestate. While so, the District Collector, Nalgonda as per the Orders issued by the Government permitted the 4th respondent-Gram Panchayat, Nakrekal by Proceedings dated 25-6-1998 to lease out the said shops, which were constructed by the shopkeepers themselves on nominal rents for a period of ten (10) years upto 31-3-2008. Their shop in question is styled as shop No.1 and allotted in the name of their adopted son – Gaddam Narasaiah, S/o Lingaiah under the above Proceedings dated 25-6-1998. Subsequently, petitioner submitted a representation before the District Collector that their adopted son died and she is the legal heir and that the shop may be allotted in her name. She further stated that the shop originally belongs to her husband and the District Collector having obtained the report of the Mandal Revenue Officer issued Proceedings dated 18-8-1998 allotting shop No.1 in her favour. Thereafter, the 4th respondent executed a registered lease agreement dated 17-9-1998 in her favour in respect of shop No.1 consisting of 125 square yards or 1045 square metres. Further, she had deposited the lease amount of Rs.35,000/- with the 4th respondent in three instalments on 30-6-1996, 12-9-1996 and 6-10-1996 and became the

absolute lawful lessee.

Respondent No.1 herein challenging the said Proceedings of the District Collector dated 18-8-1998 filed Writ Petition No.28019 of 1998 and this Court disposed of the same on 30-12-1998 directing the 1st respondent herein to obtain a succession certificate from a competent Court. Thereafter, respondents 1 and 2 filed a petition in O.P.No.3 of 1999 before the Court of Junior Civil Judge at Nakrekal. However, the learned Junior Civil Judge held that the petition is not maintainable for issuance of succession certificate in respect of immovable property and the remedy lies in the District Court by way of a suit. The petition was thus dismissed as not maintainable by an Order dated 23-3-2000. However, respondents 1 and 2 approached the 3rd respondent-Administrator General of Andhra Pradesh, Hyderabad and filed C.A.No.32 of 2000 for grant of succession certificate in respect of the deceased person-Gaddam Narsaiah (adopted son). Petitioner had produced the lease agreement dated 17-9-1998 and Order of the learned Junior Civil Judge, Nakrekal dated 23-3-2000 made in O.P.No.3 of 1999 and pleaded that her husband Lingaiah was the original lessee and the lease was given to her and as such, respondents 1 and 2 have no concern for the said property. Respondents 1 and 2 putforth their claim stating that they are the natural parents of the deceased person; therefore, they are entitled to succeed to the leasehold rights, but such a case of respondents 1 and 2 is not tenable. However, learned Administrator General passed an Order dated 12-12-2001 grating Letter of Administration to respondents 1 and 2 under Section 29 of the Administrators General Act. Aggrieved by the same, the petitioner filed a Writ Petition in W.P.No.3497 of 2002 and this Court by an Order dated 8-8-2002

allowed the same and remanded the matter to the 3rd respondent for fresh disposal in accordance with law. Even after remand, according to the petitioner, the 3rd respondent had not looked into the matter as required under the law and without appreciating the facts and circumstances of the case in proper perspective, ordered C.A.No.32 of 2000 granting Letter of Administration to respondents 1 and 2 against their entitlement. Challenging the same, the present Writ Petition is filed.

Heard the learned counsel for the parties and perused the entire material made available on record including the impugned Order and the counter affidavit of the 4th respondent.

There is no necessity of going into all the details. It appears that there is no dispute as to the relationship of the petitioner and respondents 1 and 2 and the death of Gaddam Lingaiah, husband of the petitioner and also the death of their adopted son – Gaddam Narasaiah. During the life time of Gaddam Lingaiah, he obtained lease from the 4th respondent-Gram Panchayat and erected a small Hut/Bunk No.131 at his own cost. Thereafter, vide Proceedings dated 25-6-1998, the District Collector granted lease over the said shop, on nominal rent, for a period of ten years i.e. upto 31-3-2008 in favour of the petitioner. The shop in question was styled as Shop No.1. Gaddam Lingaiah, husband of the petitioner died intestate on 31-10-1989. By Proceedings dated 18-8-1998 of the District Collector, Shop No.1 was allotted in the name of the petitioner, since originally it belongs to her husband - Gaddam Lingaiah, on the basis of a report submitted by the Mandal Revenue Officer. Thereafter, the 4th respondent has executed a registered lease deed dated 17-9-1998 in her favour in respect of Shop No.1. She had deposited an amount of

Rs.35,000/- with the 4th respondent in three instalments on 30-6-1996, 12-9-1996 and 6-10-1996. In this backdrop, it has to be examined as to whether granting of succession certificate in favour of respondents 1 and 2 by the Administrator General is said to be correct or not.

It seems, the documents – Exs.B1 to B4 – though marked on behalf of the petitioner herein, but were not considered holding that they were Xerox copies. There is no specific finding as to rejection of these documents. Apart from this, the following documents were also filed by the petitioner herein along with written arguments:

1. Photo copy of Adoption deed.
2. Lagna Patrika of the deceased.
3. Six original receipts of paying land cist issued by Nakrekal Gram Panchayat in favour of Mangali Lingaiah towards hut Nos.131 and 137.
4. Photo copy of Proceedings of District Collector dt.21-6-1998 allotting shop in favour of the deceased as son of Lingaiah.
5. Proceedings dt.18-8-1998 of the District Collector shop allotting in favour of R.W.1.
6. Photo copy of Ex.B2.
7. Typed copy of Judgment dt.13-12-1988 of the Hon'ble High Court in W.P.No.28019 of 1998.
8. Original certified copy of Order dt.23-3-2000 in O.P.No.3 of 1999 on the file of Jr. Civil Judge at Nakrekal.

May be, the said documents were filed along with written arguments, but in a summary proceeding like this, the parties should be permitted to mark them properly. These documents seem to be very important documents, which tilt the balance. Apart from this, the notices issued by the Gram Panchayat under Section 104 of the A.P. Gram Panchayat Act and rent receipts issued by the 4th respondent in the name of Mangali Lingaiah (husband of the petitioner) would *prima facie* indicate that shop No.131 was given on lease in favour of Mangali Lingaiah, the husband of the petitioner. To show that the natural son of respondents 1 and 2 was adopted by the petitioner and

her husband late Lingaiah, the petitioner has filed electoral rolls for the year 1993. At Serial Nos.2293 and 2294 the name of the petitioner as well as her adopted son late Narasaiah, S/o Lingaiah, Male 26 years was shown. There is no discussion as to the document-voters' list marked as Ex.B1, though certified copy of the same was filed, in the impugned Order. Further, on 11-1-1985, Mangali Lingaiah also paid an amount of Rs.21/- towards rent. All the 6 (six) original receipts indicate the name of Mangali Lingaiah. The Proceedings of the District Collector, Nalgonda dated 28-6-1998 would indicate that the shop has been allotted in the name of the adopted son. The Collector through the Proceedings dated 18-8-1998 modified the earlier Order dated 28-6-1998 and allotted the shop in favour of the petitioner herein. Thereafter, lease agreement dated 17-9-1998 was entered into with the petitioner by the 4th respondent. This all would *prima facie* show that originally, the lease was granted in favour of the husband of the petitioner and thereafter, since her husband pre-deceased the adopted son, it was sought to be transferred in the name of the adopted son i.e. Gaddam Narasaiah, S/o Lingaiah (not son of Gaddam Rathnaiah) and thereafter, on conducting an enquiry, it was transferred in the name of the petitioner.

Even in the counter affidavit filed by the 4th respondent, it is stated that initially the shop in question was allotted to Lingaiah (husband of the petitioner) and the petitioner was running the shop. After passing of the orders by the 3rd respondent, they allotted the shop to the 1st respondent. *Prima facie* it appears, on the basis of Lagna Patrika, electoral rolls and the original receipts issued by the Gram Panchayat, that originally the lease was granted in the name of Gaddam Lingaiah and thereafter, though it was transferred in the name of Gaddam Narasish, S/o Lingaiah (adopted son), since he passed

away, on enquiries, the Mandal Revenue Officer seems to have recommended for transferring lease in favour of the petitioner.

Since the impugned Order was passed in an original proceeding, I deem it appropriate to set aside the same and remit the matter back to the 3rd respondent for reconsideration of the entire evidence and to mark all the documents, after hearing the parties, as per law, and then consider the matter afresh. Respondent No.3 shall dispose of the matter within a period of three months from the date of receipt of a copy of this order, positively.

Accordingly, the Writ Petition is allowed and the impugned Order is set aside. The matter is remanded to the 3rd respondent for consideration afresh, as indicated above. No order as to costs.

27-10-2006

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